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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR MANUEL MENDOZA,

Defendant and Appellant.

D053175

(Super. Ct. No. SCD200151)

APPEAL from a judgment of the Superior Court of San Diego County, Frederick Maguire, Judge. Affirmed as modified.

In 2006 Victor Mendoza entered a negotiated guilty plea to theft from an elder (Pen. Code, § 368, subd. (d)).<sup>1</sup> The court placed him on three years' probation, imposed a \$200 restitution fine (§ 1202.4, subd. (b)) and suspended a \$200 probation revocation fine (§ 1202.44). In 2008 the court revoked probation, sentenced Mendoza to the three-year middle prison term, and suspended criminal proceedings (Welf. & Inst. Code,

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

§ 3051). It imposed a \$600 restitution fine, suspended a \$600 parole revocation fine (§ 1202.45), and awarded 211 days' credit plus 104 days' section 4019 credit for a total of 315 days. Mendoza appeals.

Mendoza first contends the court lacked authority to impose the \$600 restitution and parole revocation fines because it originally imposed \$200 restitution and probation revocation fines. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 821-823; *People v. Downey* (2000) 82 Cal.App.4th 899, 921-922; *People v. Johnson* (2003) 114 Cal.App.4th 284, 306-308.) The People properly concede the point. We accordingly modify the judgment to reflect a \$200 restitution fine and a \$200 parole revocation fine in place of the \$600 fines.

Mendoza next contends the court should have awarded him 224 days' credit plus 112 days' section 4019 credit for a total of 336 days. The People properly concede the point. Mendoza was in custody in this case from July 14 to October 3, 2006; from April 10 to April 16, 2007; from October 15, 2007 to January 20, 2008; and from April 14 to May 20, 2008, a total of 224 days.

## DISPOSITION

The judgment is modified to reflect a \$200 restitution fine (§ 1202.4, subd. (b)), a \$200 parole revocation fine (§ 1202.45) in place of the \$600 fines, and 224 days' credit plus 112 days' section 4019 credit for a total of 336 days.

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NARES, Acting P. J.

WE CONCUR:

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McDONALD, J.

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O'ROURKE, J.